



# Fact Sheet

## Bay Delta Conservation Plan/California WaterFix – Water Right Petition Process

The Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) are petitioning the State Water Resources Control Board (State Water Board or Board) for a change in their respective water rights to move water via new facilities on the Sacramento River. The proposed facilities would divert water near Courtland and route it around the Delta through two tunnels to the existing State and federal pumping facilities in Tracy. This project is also referred to as the “California WaterFix.” In addition to other federal, State and local approvals, DWR and Reclamation must request changes to the water right permits and license of the State Water Project (SWP) and federal Central Valley Project (CVP) to authorize the new points of diversion. The State Water Board is responsible for approving changes in water right permits and licenses, and the Board’s review of this project is also required by provisions of the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act).

This fact sheet describes the State Water Board’s water right process by which it will consider the change petition, as well as the Board’s water quality planning processes that are proceeding concurrently in the Bay-Delta. Separate from the petition, the State Water Board is pursuing an update of the Bay-Delta Water Quality Control Plan (Bay-Delta Plan), which is a rulemaking process involving a broader range of Bay-Delta issues. While these processes have overlapping issues, each process has its own substantive and procedural requirements.

### Background

In November 2014, DWR and Reclamation along with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, which were also federal lead agencies for the project at the time, released a Draft Environmental Impact Report/Draft Environmental Impact Statement for the Bay-Delta Conservation Plan (BDCP) pursuant to the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). The BDCP’s original intent was the pursuit of federal and state endangered species permits under a federal Habitat Conservation Plan and state Natural Communities Conservation Plan, which would provide benefits beyond the full mitigation of the impacts of new conveyance facilities. BDCP consisted of a water conveyance facility, operational elements, environmental commitments, and habitat conservation measures for the Bay-Delta ecosystem.

The former BDCP now consists of two separate efforts: (1) California WaterFix, a new water conveyance facility, operational elements, and habitat restoration and other environmental commitments to mitigate construction and operation-related impacts of the new conveyance; and (2) California EcoRestore, a habitat restoration effort that goes beyond the mitigation measures identified for California WaterFix. In July 2015, DWR and Reclamation released a



Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (Environmental Document) that analyzes the California WaterFix portion of the former BDCP.

California EcoRestore is a separate effort and is not part of the water rights change petition.

## **Project Description**

The proposed California WaterFix project described in the change petition includes water conveyance facilities consisting of three new water diversion intakes along the Sacramento River north of Courtland and dual-bore (twin) tunnels to convey water to the existing state and federal pumping facilities. It also includes measures necessary to minimize or avoid adverse project effects. A more detailed description of California WaterFix project can be found in the [Environmental Document as Alternative 4A](#).

## **Processing Changes in Points of Diversion**

The State Water Board must approve changes in points of diversion contained in water right permits and licenses. A person requesting the change must file a petition with the State Water Board. In order for the State Water Board to approve a change petition, the petitioner must demonstrate a number of things. First, the petitioner must demonstrate that the change will not injure any legal user of the water involved. Second, the petitioner must provide information concerning the extent to which fish and wildlife would be affected by the change, and identify proposed measures to protect fish and wildlife from any unreasonable impacts of the change. The petitioner also must demonstrate that the proposed change will comply with any applicable requirements of the Fish and Game Code and the federal Endangered Species Act, and demonstrate compliance with CEQA.

In addition, the Delta Reform Act imposes unique requirements on the processing of a water right change petition for the California WaterFix project. The Delta Reform Act requires that any State Water Board order approving the petition include “appropriate Delta flow criteria,” and the Board’s decision must be informed by flow criteria to protect the Delta ecosystem, which the State Water Board was required to develop in 2010. The Delta Reform Act recognizes that flow criteria are not static, but shall be subject to modification over time. The Delta flow criteria are discussed in more detail, below.

After reviewing the change petition for the California WaterFix project, the State Water Board will provide public notice of the petition, and inform interested parties how they may participate in the decision-making process. Not all change petitions require a hearing. In light of the complexity and magnitude of the California WaterFix project and likely disputed facts, however, the State Water Board anticipates that it will notice an evidentiary hearing on the petition.

During the evidentiary hearing anticipated by the State Water Board, interested parties will be given the opportunity to present evidence and argument about whether and under what conditions the petition should be approved. The hearing would be public and certain procedural requirements must be met to participate in the hearing as either an interested person or a party. The public record for the hearing would then serve as the basis for the Board’s decisions regarding the project.

The change petition, associated hearing, and State Water Board decision are solely about the California WaterFix proposal to add additional diversion points on the Sacramento River. The determinations the State Water Board must make to either approve, approve with conditions, or deny the change petition are limited to the factors specified by the Water Code and Board regulations. If the change is approved, the Board's decision must include appropriate Delta flow criteria for the relocated points of diversion.

## **Relationship to the Board's Comprehensive Bay-Delta Effort**

### *Bay-Delta Plan*

The State Water Board is simultaneously in the process of developing and implementing updates to the Bay-Delta Water Quality Control Plan (Bay-Delta Plan). This effort is much broader than the change petition process. In developing and updating the Bay-Delta Plan, the Board must consider a comprehensive list of environmental, economic, and societal factors, competing beneficial uses, and the effects of all water diversions, as well as other factors affecting beneficial uses in the Bay-Delta.

The Bay-Delta Plan includes beneficial uses that fall into three broad categories: fish and wildlife, agricultural, and municipal and industrial uses. Current Bay-Delta Plan water quality objectives include: inflows from the Sacramento and San Joaquin Rivers; Delta outflows; water project operations; dissolved oxygen; salmon protection; and various salinity objectives to protect fish and wildlife, agriculture, and municipal and industrial uses. As required by law, the Bay-Delta Plan includes a program of implementation. The plan's program of implementation describes the actions that the State Water Board and other entities, would take, including non-flow and water quality actions, to implement the plan.

### *Phases of Bay-Delta Plan Update*

- Phase 1 of the State Water Board's Bay-Delta planning efforts involves updating San Joaquin River flow and southern Delta salinity objectives and their associated program of implementation included in the Bay-Delta Plan.
- Phase 2 involves other changes to the Bay-Delta Plan to protect beneficial uses not addressed in Phase 1, including Delta outflow objectives, Sacramento River inflow objectives, export/inflow objectives, and potential new reverse flow objectives for Old and Middle Rivers, as well as their program of implementation.
- Phase 3 involves changes to water rights and other measures to implement changes to the Bay-Delta Plan from Phases 1 and 2.
- Phase 4 involves developing and implementing flow requirements for priority Delta tributaries outside of the Bay-Delta Plan updates.

### *2010 Delta Flow Criteria and Future Flow Objectives*

In 2010, the State Water Board approved a report on the development of flow criteria for the Sacramento-San Joaquin Delta Ecosystem, as required by the Delta Reform Act. The report was not a regulatory document. The flow criteria include the volume, quality, and timing of flows necessary to protect public trust resources in the Delta. The report was narrowly focused on the suggested flows needed in the Delta ecosystem if fishery protection was the

sole purpose for which its waters were put to beneficial use. The report recognized that there are many other important beneficial uses that these waters support such as municipal and agricultural water supply and recreational uses. The information in the report is one of many factors that the State Water Board will consider and balance against other factors as the Board updates the Bay-Delta Plan.

As part of the plan update process, the State Water Board is required by law to establish flow and other objectives and implementation measures to reasonably protect beneficial uses. In order for any flow objectives and implementation measures to be reasonable, the State Water Board must consider and balance all competing uses of water in its decision-making, including analyzing the water supply, economic, and hydropower effects of a broad range of alternatives.

The State Water Board will also factor in relevant water quality, water supply, and habitat needs as it considers potential changes to the Bay-Delta water quality objectives and implementation measures. Currently, State Water Board Decision 1641 requires the SWP and CVP to meet certain water quality objectives contained in the Bay-Delta Plan, but both the objectives themselves and the responsibility of the SWP and CVP for meeting the objectives may be revised as a result of Phases 1 through 3 of the ongoing Bay-Delta planning efforts.

### *Relationship between the Bay-Delta Plan Update and the Change Petition*

In light of the different statutory and procedural requirements applicable to the State Water Board's water right and water quality processes, the State Water Board will concurrently review the change petition for the California WaterFix project separate from, and likely before completion of the Phase 2 update of Delta outflow and other flow objectives of the Board's Bay-Delta planning efforts. While Delta and Sacramento flow issues are raised in both proceedings, the Bay-Delta Plan update provides the opportunity for a more comprehensive assessment of Delta and Sacramento River flow issues. Any new flow objectives established in the Bay-Delta Plan update will lead to potential future changes in conditions of the CVP and SWP's water rights, regardless of whether a change petition for the California WaterFix project is approved.

As required by the Delta Reform Act, the State Water Board will consider the 2010 Delta flow criteria and include "appropriate Delta flow criteria," in any decision approving the petition. As discussed above, however, the 2010 Delta flow criteria are fundamentally different from water quality objectives because they were developed without taking into consideration competing beneficial uses of water. In addition, the 2010 Delta flow criteria do not address the relative responsibilities of DWR, Reclamation, and other water right holders for meeting water quality objectives. Likewise, the State Water Board's decision in the change petition proceeding will not determine whether any other water right holders should be required to make additional outflow contributions because that determination will occur in Phase 3.

The State Water Board anticipates that the flow criteria associated with the California WaterFix change petition approval would ultimately be superseded based on more comprehensive Delta flow objectives and their program of implementation developed in a future Bay-Delta Plan update. Delta flow criteria included in any decision approving the change petition would not apply until the new diversion facilities are constructed and used.

## Timeline

The State Water Board will issue a public notice of the change petition later this fall, which will include an anticipated schedule for processing the petition. State Water Board proceedings for water right change petitions are quasi-judicial. Complex proceedings such as these are often a multiyear process.

The State Water Board is concurrently undertaking its Bay-Delta Plan Phase 2 effort. Preliminary Phase 2 recommendations along with the scientific basis for updated objectives and a program of implementation may be entered into the record for the change petition proceeding if they become available before the deadline for submittal of testimony and exhibits. Water quality planning processes in the Bay-Delta take multiple years to complete. The Budget Act for Fiscal Year 2015-16 includes resources to accelerate the Bay-Delta Plan update process to allow timely completion of the update consistent with the Governor's California Water Action Plan.

Any action taken by the State Water Board on the change petition will be subject to modification, as contemplated by the Delta Reform Act, and as necessary to comply with future amendments to, and implementation of, the Bay-Delta Plan.

For further information on the State Water Board's comprehensive Bay-Delta planning efforts, please see [here](#).